

**CALFEE**

sstrom@calfee.com  
216.622.8479 Direct

June 5, 2009

**VIA E-MAIL AND  
CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Ms. Kristine Koch  
Remedial Project Manager  
U.S. EPA - Region 10  
Office of Environmental Cleanup, Mail Code ECL-115  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

Re: Portland Harbor Superfund Site, Portland, Oregon -  
Notice of Non-Response and Potential Enforcement Action

Dear Ms. Koch:

The purpose of this letter is to follow up on my December 10, 2008 correspondence in response to U.S. EPA's Notice of Non-Response and Potential Enforcement Action ("Notice") to RPM International Inc. ("RPM") regarding the Portland Harbor Superfund Site (the "Site").<sup>1</sup>

It is RPM's understanding that U.S. EPA believes that there is a "corporate link" between Zinsser Co., Inc. ("Zinsser") and Zehrung Corporation ("Zehrung"), which purportedly used to have a facility located at 2000 NW Wilson Street, Portland, Oregon. However, as set forth more fully below, while Zinsser was party to two transactions with Zehrung in the 1990s, Zinsser's only dealings with Zinsser were to acquire certain personal property and intangibles; Zinsser did not acquire and never operated or otherwise occupied Zinsser's facility in Portland and, thus, is not responsible for site conditions at Portland Harbor.

**1991 Transaction**

In 1991, Zinsser manufactured certain liquid glaze products sold primarily to manufacturers for coating pharmaceutical tablets and confections ("Glaze Products"). However, Zinsser, wished to

<sup>1</sup> RPM objects again to U.S. EPA's original issuance of a "Notice of Non-Response" to RPM. Contrary to the statements in the Notice, RPM had never received any communications regarding the Site prior to the Notice of Non-Response. Thus, U.S. EPA's explicit assumption that RPM ignored one or more previous CERCLA § 104(e) requests for information is incorrect. The fact that U.S. EPA apparently sent § 104(e) requests to Zehrung at addresses in Portland and Lake Oswego, Oregon--where Zinsser has never had any operations of any kind--does not constitute notice to RPM.

**RECEIVED**

JUN 10 2009

**Environmental  
Cleanup Office**

Calfee, Halter & Griswold LLP  
Attorneys at Law

1400 KeyBank Center  
800 Superior Avenue  
Cleveland, Ohio 44114-2688  
216.622.8200 Phone  
216.241.0816 Fax  
www.calfee.com

Ms. Kristine Koch  
Remedial Project Manager  
June 5, 2009  
Page 2

increase its customer base for Glaze Products by acquiring certain inventory, accounts receivable, customer information, manufacturing technology and know-how. Accordingly, on January 14, 1991, Zinsser ("Buyer") entered into an Asset Purchase Agreement with Zehrung ("Seller") ("1991 APA"). The assets acquired by Zinsser consisted solely of: (i) all intangible personal property of Seller related to the manufacture and sale of Glaze Products; (ii) all accounts receivable of Seller related to the sale of Glaze Products; and (iii) all stock and supply of food grade alcohol which Seller had on hand at its plant in Los Angeles, California on the Closing Date.

Thus, the assets acquired by Zinsser in 1991 consisted solely of personal property and certain intangibles. Zinsser did not take title to, or acquire any other interest in, any real property of Zehrung.

### **1997 Transaction**

Pursuant to an Asset Purchase Agreement dated December 1, 1997, by and among William Zinsser ("Buyer"), Zehrung ("Seller") and Henry M. Tobey, Norma Tobey, Douglas Tobey, James Tobey and Jeanne Pellatz ("Shareholders") ("1997 APA"), Zinsser acquired substantially (but not) all of the assets of Zehrung. Specifically, Zinsser purchased certain assets, including receivables, inventory, tangible personal property, intellectual property rights and technical documentation.

However, Zinsser did not purchase the "Excluded Assets," which included Zehrung's rights under the Contracts listed on Schedule 1.3(d). Pursuant to Schedule 1.3(d), the Excluded Contracts were those listed on Schedule 4.5.3 which were not marked with an asterisk. Schedule 4.5.3 indentified two lease agreements to which Zehrung was a party--the two leases listed on Schedule 4.5.3 were the only references to real property in the 1997 APA. As neither lease was marked with an asterisk, Zinsser never assumed any rights or acquired any interest in the real property that had been leased by Zehrung.

Thus, the 1997 asset acquisition did not include Zehrung's leased manufacturing facility. In fact, Zinsser moved the production of Zehrung products to Zinsser's existing facility in Massachusetts.

In sum, Zinsser is not related to Zehrung in any way. Zinsser simply purchased product lines from Zehrung, along with equipment to manufacture these products at Zinsser's own facility in Massachusetts. Zinsser never operated at any Zehrung facility, including the facility in the Portland area. Accordingly, there is no basis for holding RPM liable under CERCLA with respect to the Site. RPM requests that U.S. EPA provide written confirmation that it is not a potentially responsible party at the Site.

Ms. Kristine Koch  
Remedial Project Manager  
June 5, 2009  
Page 3

The information in this letter is trade secret, proprietary and/or company confidential. **Pursuant to 40 C.F.R. Part 2, Subpart B, RPM hereby asserts a claim of business confidentiality with respect to the information set forth herein and requests that U.S. EPA treat all such information as confidential.**

Very truly yours,

A handwritten signature in cursive script, appearing to read "Susan R. Strom".

Susan R. Strom